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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 4793 / 2004

PETITIONER:

Dihudas Sahu, S/o Late Shri Chotudas Sahu, aged about 50 years, R/o Village Indramara , Post- Pendri, Tehsil & District Rajnandgaon , Chhattisgarh

4797/04
P.R. ...
Presented by Shri Alok Dewangan
dated 08-12-04

VERSUS

RESPONDENTS:

1. State of Chhattisgarh Through the Secretary, Agriculture Department Mantralaya, D.K.S. Bhawan Raipur, (C.G.)

2. The Managing Director Chhattisgarh State Agricultural Marketing Board, Raipur C.G.

3. The Deputy Director Chhattisgarh State Agricultural Marketing Board, Raipur C.G.

4. The Collector District Rajnandgaon, Rajnandgaon , (C.G.)

5. Amrit Lal Yadu Secretary , Krishi Upaj Mandi Samiti, Gandai, District Rajnandgaon.C.G.

8/12/04
Clerk to A. G. Bilaspur

मपथ आयुक्त
8/12/04
बिलासपुर तहसील कोर्ट

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUENCE OF WRIT IN THE NATURE OF MANDAMUS, PROHIBTION, CERTIORARI, AND ANY OTHER WRITS, DIRECTIONS OR ORDERS.

The petitioner named above respectfully submits the particulars of the petition as under: -

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 4293/ **सन्** 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	10.1.2005 On a mention being made, the case is taken up for hearing. Shri Alok Dewangan, counsel for the petitioner. Shri Sumesh Bajaj, Deputy Govt. Advocate for the State. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the correctness and legality of the show cause notice dated 1st December, 2004 (Annexure P-1) issued by the Managing Director, Chhattisgarh State Agricultural Marketing Board, Raipur, whereby the petitioner has been asked to show cause that on account of the three points mentioned in the show cause notice why action should not be taken against him under Section 55 of the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972. I have heard learned counsel for the petitioner on the question of admission. Learned counsel for the petitioner submits that the show cause notice has been issued merely on the ground of forged documents. He further submits that some irregularities were being committed by the Secretary of the Krishi Upaj Mandi Samiti, Dongargaon and in the Samiti meeting dated 22nd March, 2004, it was decided to conduct sudden inspection of the work which was in progress in Mandi and during the inspection gross irregularities were noticed on the part of Secretary of the Mandi Samithi as he was selling goods for his personal profit.	

Gr. PRJ—FS/350—12/2000—50,000.

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मामला क्रमांक W.P. 4793/ **सन्** 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Therefore, on the same day i.e. 22.3.2004 resolution for taking action against the Secretary was passed and consequent to that a complaint was made to the Managing Director on 7.4.2004 demanding action against the said Secretary. In order to save himself, the said Secretary levelled allegations against the petitioner before the Managing Director and prepared forged documents in order to implicate the petitioner in a concocted manner. Therefore, the action of the respondents calling upon the petitioner to show cause should be stayed.

On the other hand, learned Deputy Govt. Advocate submits that the petitioner has approached this Court merely against the show cause notice and he is within his right to reply the show cause notice. The petitioner is entitled to raise all those points before the Managing Director which have been raised in this writ petition, and before passing any final order, the petitioner is not entitled to approach this Court against the show cause notice.

In this connection, relevant provision under the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972, is sub-section (2) of Section 55 which envisages that "the Managing Director may remove any Chairman or Vice-Chairman of a market committee from his office, for misconduct, or neglect of or incapacity to perform his duty or for being persistently remiss in the discharge of his duties and on such removal the Chairman or Vice-Chairman, as the case may be, shall not be eligible

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

for re-election as Chairman or Vice-Chairman during the reminder of his term of office as member of market committee". Proviso to sub-section (2) further envisages that "provided that no order of removal shall be passed unless the Chairman or Vice-Chairman, as the case may be, has been given a reasonable opportunity of showing cause why such order should not be passed".

Perusal of the notice dated 1.12.2004 (Annexure P-1) shows that the said notice has been issued to the petitioner under Section 55 of the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972, on the three grounds mentioned in the notice itself, first of which shows that certain amount of Rs.2,930/- was not deposited by the petitioner herein and that amount was deposited by one Manoharlal Semhle, Assistant Inspector Seed Supervisor after nine months. Similarly, the Mandi Shulk of Rs.5,000/- which was collected from M/s. New Daga Traders, Singhola, on 14.7.2003 was not deposited on the same day and the same was deposited by one Naresh Bhandari on 17.7.2003. The third allegation is that the petitioner took a loan of Rs.20,000/- through A.L. Yadu from Shyam Shukla and out of which only Rs.10,000/- was returned and the rest of the money is said to have been given to the Secretary. The petitioner has been asked to explain and show cause about these three allegations within seven days. Therefore, under sub-section (2) of Section 55, the Managing Director is authorized to take action for the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

misconduct or neglect or incapacity to perform his duty. The only condition is that the Chairman or the Vice-Chairman, as the case may be, must have given show cause notice before passing any order of removal. The notice impugned has been given under this provision and the petitioner has been asked to give his reply, therefore, there is no non-compliance of any mandatory provisions. As far as the allegations of the petitioner as has been raised by learned counsel for the petitioner that enquiry has been initiated on the strength of the forged documents, the petitioner is entitled to file reply to the Managing Director along with all other points, which are available to the petitioner, and the Managing Director after considering all the points raised by the petitioner shall decide the objection, that too after giving reasonable opportunity of showing cause to the petitioner.

In this connection, decision of the Hon'ble Apex Court in the matter of **Special Director and another v. Mohd. Ghulam Ghouse and another** reported in **2004 AIR SCW 416**, is relevant in which the Apex Court has held that

> "writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties is deprecated. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.4793/ **सन्** 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court."

Therefore, in light of the above judgment of the Supreme Court and also looking to the provisions of sub-section (2) of Section 55 of the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972, I am of the opinion that this writ petition is not maintainable only on this ground. The writ petition is dismissed at the admission stage itself. No costs.

Consequently, M.(W.)P.No.5078/2004 and I.A.No.9552/2004 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

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